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Supreme Court of the United States

OCTOBER TERM, 1961

No. 468

In the Matter of the Application

of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners,

against

WILLIAM J. VITALE, Jr., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents,

directing them to discontinue a certain school practice

and

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSEMARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MacFARLANE,

Intervenors-Respondents.

STATES ATTORNEYS GENERAL BRIEF AMICI CURIAE IN SUPPORT OF RESPONDENTS AND INTERVENORS–RESPONDENTS

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March 27, 1962

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Intervenors-Respondents

MOTION OF STATES ATTORNEYS GENERAL FOR LEAVE TO FILE BRIEF AMICI CURIAE

The undersigned, Attorney General of Nevada, on his own behalf, on behalf of the several states attorneys general whose names appear in this brief, and on behalf of

other states attorneys general who may at a later date, and before the decision in this case is rendered, move the Court to have their names added hereto, respectfully moves this Honorable Court, pursuant to the rules of this Court, for an order authorizing the late filing of the within brief upon the following grounds:

1. That knowledge that this case was before the Court did not come to the attention of the states attorneys general until a very late date and only recently have the respective attorneys general had an opportunity to read briefs that have been filed herein.

2. That this case is one of vital importance to the welfare of our Nation and to the preservation of its spiritual and moral heritage.

3. That although this brief supports the position of the respondents and intervenors-respondents, it does not raise additional points and authorities justifying any response by petitioners or amici curiae supporting petitioners' position.

ROGER D. FOLEY
Attorney General of Nevada

Supreme Court of the United States

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BRIEF OF STATES ATTORNEYS GENERAL AS AMICI CURIAE

Statement of Interest and Argument

History makes it clear that the architects of this Republic were men of deep religious faith. Our founding fathers,

together with the great and God-fearing leaders of the last century and a half, would be profoundly shocked were they to have been told in their day that in this year of our Lord, One Thousand Nine Hundred and Sixty-two, a voluntary nondenominational acknowledgment of a Supreme Being and a petition for His blessings, recited by American children in their classrooms, is being seriously attacked as a violation of the Constitution of the United States!

As the attorneys general of our sovereign states, we recognize and defend the right of every man to believe in God or not believe as he chooses, and should he profess such a faith, as nearly all Americans do, to worship God as he desires. Nevertheless, we firmly believe that as a Nation, America must remain true to her religious heritage and tradition. Our children must continue to have every opportunity to gain an appreciation of this heritage and tradition, not only at home and in the church, but also in public activities, including public schools and other governmental functions.

The basis of our national belief in the supremacy of the individual and the subservience of the state is a religious concept, not just a political or majority point of view. Those men who influenced the formation of our government, who authored the Declaration of Independence and the Constitution, and, in particular, those great leaders so often quoted in the briefs before the Court in this case, believed and taught that man is a creature of Almighty God and has an eternal destiny; that the dignity of the individual, his right to liberty and self-government, are God-given and inalienable.

The New York "Regents' Prayer" reads as follows:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

If the "Regents' Prayer" cannot be said in the public schools without violating the First and Fourteenth Amendments of the Constitution of the United States, then what about the Pledge of Allegiance to the American Flag, wherein God's name is used, recited in schools as well as during other governmental activities? What of public prayer in the Congress, in our State Legislatures? What of the President's inauguration and oath of office, and similar oaths of lesser officials? What of the oaths used in our courts? What of the motto, "In God we trust", on our coins, and the Great Seal of the United States with its references to God? Yes, what of the very words employed in the opening of each day's session of this Supreme Court, "God save the United States, God save this Honorable Court"? What of the expressions in the constitutions of forty-nine of our fifty states making mention of a Supreme Being and expressing gratitude to God for all our blessings?

There is nothing in the First Amendment that limits the prohibition against "an establishment of religion" to the field of education.

If the voluntary recitation of this nondenominational prayer recited in public schools is unconstitutional, then it should logically follow that public acknowledgment of and prayer to Almighty God must be banished from all governmental functions.

The vast majority of our countrymen hold fast to the belief that America became a great nation and will remain

freedom's stronghold only if she remains true to her religious heritage and tradition. Our beloved country as we know it cannot survive as a Godless nation.

In 1892, in "Holy Trinity Church v. United States," 143 U.S. 457, this Court said:

> But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is single voice making this affirmation. (p. 465)

In 1951, in "Zorach v. Clauson," 343 U.S. 306, this Court said, "We are a religious people whose Constitution presupposes a Supreme Being."

Please God we shall ever remain a religious people.

Conclusion

For the reasons above set forth, we fully support the position, and adopt the briefs, of respondents and intervenors-respondents. We urge this Honorable Court to affirm the decision of the Court of Appeals of the State of New York.

Respectfully submitted,

ROGER D. FOLEY
Attorney General of Nevada
Carson City, Nevada

And each Attorney General heretofore listed, Amici Curiae.